

## **REMARKS**

Applicant thanks the Examiner for the telephone interview of March 4, 2003, and prior indication of allowable subject matter in claims 6, 7, 10, 16, 12-14, 23 and 25. Claims 1-5, 7-10, 12-16, 23 and 25 are now pending in this application. Of these claims, claims 1, 7 and 23 have been amended, while claims 6, 17-20, 22 and 24 have been deleted.

No new matter has been added to this application. For at least the reasons stated below, Applicant requests reconsideration and asserts that all claims are now in condition for allowance.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

Claims 17-20, 22 and 23 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Pursuant the Examiner's suggestion, language of claim 17 has been amended to delete "the U-shaped member" and provide proper antecedent basis. Since claims 18-20, 22 and 23 depend from claim 17, the antecedent basis of the phrase "the U-shaped member" in those claims is also correct. Since the Examiner indicated that claim 23 would be allowable over the art of record upon correction of the 35 U.S.C. § 112 rejection, Applicant has amended claim 23 to include the limitations of the corrected claims 17 and 18. Claims 17-20 and 22 have been deleted. Accordingly, Applicant requests withdrawal of the 35 U.S.C. § 112 rejection.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-4 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Wagler*, U.S. Patent No. 2,573,372. The Examiner states that *Wagler* discloses all of the limitations of the claims. Applicant opposes this rejection, in light of the claim amendments.

Applicants have amended claim 1 to include the subject matter of claim 6, indicated as allowable over the art of record by the Examiner. Specifically, *Wagler* fails to disclose or suggest a leg that is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member; the upper ring of the plant support attached to said one leg proximate the closed end such that a loop is formed above the upper ring by the closed end of the leg; and the ends of the two portions of the U-shaped member adapted to engage the ground.

Accordingly, *Wagler* fails to disclose or suggest all of the limitations of claim 1. Further, since claims 3, 4 and 8 depend from claim 1, *Wagler* fails to disclose all of the limitations of those claims for the same reasons. Thus, the rejection of claims 1-4 and 8 is improper, and Applicant requests reconsideration and withdrawal of the rejection.

Claims 17-19 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Johnson*, U.S. Patent No. 3,148,850. The Examiner states that *Johnson* discloses all of the limitations of claims 17-19 and 22. Applicants assert that this rejection is moot in light of the above claim amendments canceling claims 17-19 and 22. Accordingly, the rejection of claims 17-19 and 22 is improper. Applicant requests reconsideration and withdrawal of the rejection of these claims.

Claim 24 is rejected under 35 U.S.C. § 102(b) as being anticipated by *Briggs*, U.S. Patent No. 1,359,026. The Examiner states that *Briggs* discloses all of the limitations of claim 24. Applicants assert that this rejection is moot in light of the cancellation of claim 24. Applicant requests reconsideration and withdrawal of the rejection of claim 24.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wagler*, U.S. Patent No. 2,573,372 in view of *Elliott*, U.S. Patent No.

5,640,802. Applicant opposes this rejection in light of the claim amendments above.

As stated in the 35 U.S.C. § 102 rejections above, claim 1 has been amended to incorporate indicated allowable subject matter. Since claim 5 depends from claim 1, it includes all of the limitations of claim 1. Since claim 1 is allowable, as asserted above, claim 5 is allowable over the art of record from the same reasons.

Accordingly, Applicant asserts that the combination of *Wagler* and *Elliott* fails to disclose all of the limitations of claim 5. Therefore, Applicant requests withdrawal of the rejection of claim 5.

Claims 9 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wagler*, U.S. Patent No. 2,573,372. Applicant opposes this rejection for the same reasons as stated in the rejection of claim 5 above. Claims 9 and 15 depend from claim 1, and include all of the limitations of claim 1. Since claim 1 is allowable over the art, claims 9 and 15 are allowable over the art of record from the same reasons. Accordingly, the rejection of claims 9 and 15 is improper. Applicant requests withdrawal of the rejection of claims 9 and 15.

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Johnson*, U.S. Patent No. 3,148,850 in view of *Elliott*, U.S. Patent No. 5,640,802. The Examiner states that it would have been obvious to one of ordinary skill in the art to modify *Johnson* to provide a support member made of plastic, as taught by *Elliott*. Applicant asserts that the rejection of claim 20 is moot of the cancellation of this claim. Applicant requests withdrawal of the rejection of claim 20.

### **Conclusion**


For at least the above indicated reasons, Applicant submits that all pending claims are distinguishable over the art of record and now in

condition for allowance and respectfully requests that a Notice of Allowance be issued in this case. If the Examiner believes that a conference would be of value in expediting the prosecution of this application, the undersigned can be reached at the telephone number listed below.

Attached is a marked up version of the changes made to the specification by the current amendment. The attached page is captioned "Version with markings to show changes made."

Should any additional fees be necessary, the Commissioner is hereby authorized to charge or credit any such fees or overpayment to Deposit Account No. 50-1901 (Reference No. 20386/305).

Respectfully submitted,

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## VERSION WITH MARKINGS TO SHOW CHANGES MADE

### IN THE TITLE

Please amend the title as follows:

IN-GROUND CONTAINER STABILIZER ~~WIRE CAGE~~ FOR NURSERY  
ITEMS

### IN THE CLAIMS

Please amend claims 1, 7 and 23 as follows:

- 1. (Twice amended) A stackable plant support comprising:

an upper ring;

a lower ring;

at least one leg attached to the upper ring and lower ring, the leg adapted to support the upper ring and lower ring and engage the ground, the leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend in said leg, the ledge located below the position where the lower ring attaches to the leg; [and]

wherein said at least one leg is an elongated U-shaped member comprising a closed end and an open end defined by two portions of the U-shaped member;

the upper ring is attached to said at least one leg proximate the closed end such that a loop is formed above the upper ring by the closed end of the leg;

the ends of the two portions of the U-shaped member are adapted to engage the ground; and

the plant support shaped to enclose plants and support plant containers.

7. (Twice amended) The stackable plant support of claim 1 6 wherein the ledge is defined by ~~has~~ a bend in the two portions of the U-shaped member.

23. (Amended) A support member for a plant support apparatus, the support member comprising:

at least one leg attachable to an upper ring and a lower ring, the leg adapted to support the upper ring and lower ring and engage the ground;

the at least one leg comprising a ledge shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground;

wherein the ledge is defined by a bend in the at least one leg, the ledge located below the position where the lower ring attaches to the at least one leg;

wherein said at least one leg is an elongated U-shaped member comprising:

a closed end and an open end defined by two portions of the U-shaped member;

a portion of the upper ring adapted to attached proximate the closed end of said at least one leg such that a loop is formed above the upper ring by the closed end of the leg; and

the end of the two portions of the U-shaped member are adapted to engage the ground; and

[The support member of claim 18,] wherein the loop is positioned in a different plane as the two portions of the U-shaped member at the open end.